

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*Filed under  
Proc. IL*

*2532*

**FILE: B-192407**

**DATE: August 31, 1978**

**MATTER OF: Jazco Corporation**

**DIGEST:**

Where bidder protests alleged improprieties in solicitation to agency prior to bid opening, agency's opening of bids without taking any corrective action constitutes initial adverse agency action within meaning of GAO bid protest procedures. Subsequent protest to GAO filed more than 10 working days after bid opening is therefore untimely and will not be considered on merits.

By letter of July 7, Jazco Corporation protested the award of a contract under invitation for bids (IFB) DAAC49-78-B-0061, issued by the Army for pollution control equipment at Tooele Army Depot, Utah. Jazco argued that the procurement, a total small business set-aside, was defective and contrary to the intent of the Small Business Act because it did not require the installation of equipment manufactured by small business concerns, as such equipment was readily available from small business.

In its comments on the agency report Jazco clarified the grounds of its protest. Jazco states that it is not its intention to prohibit an agency, in all circumstances, from permitting components which may be manufactured by large business. Rather, Jazco now contends that the specifications are unduly restrictive of competition because they restrict certain components of the pollution control system to equipment which is manufactured solely by large business.

For the following reason, we believe Jazco's protest is untimely.

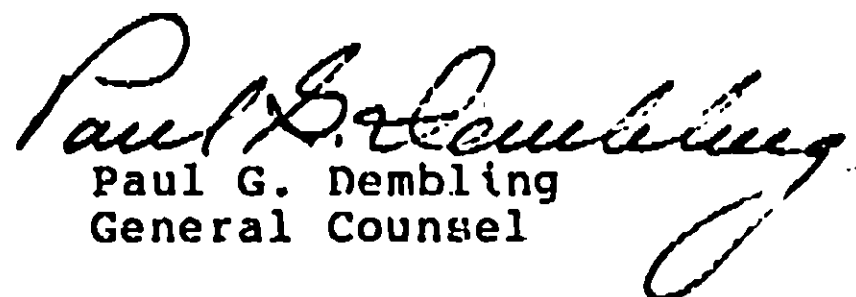
By letter of May 24, 1978, to the contracting officer Jazco objected to the solicitation specifications which required that some of the components of the pollution control system be manufactured by large business. Jazco went on to make "suggestions to the recipients of this letter" and stated:

- "1. On any contract Set-Aside for SB/MBE [small business/minority business enterprise], a subcontract or equipment procurement may be made from other than a SB/MBE provided the equipment is not available from SB/MBE and other contractual requirements are met.
- "2. By copy of this letter to GAO we suggest that a uniform method of accounting and reporting be established for SB/MBE awarded contracts  
\* \* \*."

A copy of this letter was received by our audit division on June 12. It is clear this letter was a protest to the agency and the protester was merely forwarding a suggestion to this Office regarding the method of reporting small business awards. By its letter of July 7, Jazco formally protested to our Office.

To be considered a timely protest with GAO, Jazco was required to file a protest here within 10 days of initial adverse agency action on its protest filed with the agency. 4 C.F.R. § 20.2(a). Where a bidder protests alleged improprieties in a solicitation to the agency prior to bid opening, the opening of bids without taking any corrective action constitutes initial adverse agency action within the meaning of our Bid Protest Procedures. Electro Magnetic Refinishers, Inc., B-191240, March 3, 1978, 78-1 CPD 168. Because the bid opening occurred on June 12, Jazco's protest to our Office, received (on July 12) more than ten days after bid opening, was untimely filed.

For the reasons stated, the protest is dismissed.

  
Paul G. Dembling  
General Counsel